

Chapter 19 FACT FINDING

19.1.0 INTRODUCTION

Section 49.152, Stats, provides for a dispute resolution or Fact Finding process for applicants or participants to request a review of the W-2 agency's action. The Fact Finding process replaces the Fair Hearing process for Aid to Families with Dependent Children (AFDC) applicants and recipients under s.49.21, Stats. Section 402(a)(1)(B)(iii) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193), which provides that a state must include in its State Plan, an explanation of how the state will provide for recipients to be heard in an administrative or appeal process .

19.2.0 PETITION FOR FACT FINDING REVIEW (First Level Review)

Individuals who believe that an agency decision regarding any component of W-2 (e.g., employment positions, Job Access Loans, Child Care, Learnfare, Emergency Assistance) is incorrect may request a Fact Finding review by the W-2 agency within 45 days from the date of the CARES decision notice, or within 45 days from the effective date of the decision announced in the notice, whichever is later. W-2 payments shall not be continued pending the Fact Finding decision, with the exception of requests for a Fact Finding Review within 10 days of the notice due to a Learnfare penalty. (See Chapter 12).

Individuals who disagree with the agency's decision regarding Medicaid, food stamp or Refugee Cash and Medical Assistance benefits must file a separate request for a Fair Hearing with the Department of Administration, Division of Hearings and Appeals. Participants must follow the current Fair Hearing time frame. (Refer to Income Maintenance Manual, Chapter II, Part G, Fair Hearings.)

19.2.1 Application Decision

An individual who believes the denial of an application for W-2 services is incorrect, the employment position placement was inappropriate, or the application was not acted upon with reasonable promptness (30 days), may file a written request to the W-2 agency to complete a Fact Finding review of the decision. The W-2 agency must receive the request in writing within 45 days from the date of the CARES decision notice, or within 45 days from the effective date of the decision announced in the notice, whichever is later. The W-2 agency must review the case and make a final decision following the petition for review.

19.2.2 Termination or Reduction of W-2 Payments

Recipients who believe that the reduction or termination of the W-2 payments is incorrect may submit a written request for Fact Finding review to the W-2 agency. The W-2 agency must receive the request within 45 days from the date of the CARES decision notice, or within 45 days from the effective date of the decision announced in the notice, whichever is later.

19.2.3 Fact Finder

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Each W-2 agency must have at least one individual assigned to complete Fact Finding reviews. The fact finder cannot be the same person who took action on the case. The fact finder must be neutral and provide an objective review and decision on the Fact Finding request. W-2 agencies may chose to establish a process with another W-2 agency to assist in providing a thorough and objective Fact Finding review. The fact finder must have a full and complete understanding of all impacted programs.

19.2.4 Fact Finding Review

The Fact Finding review is an informal process to resolve issues, explain the proposed action or inaction, and permit the petitioner to present information. The W-2 agency shall date stamp all requests for Fact Finding reviews the date the request was received. The W-2 agency must respond to the complaint by completing an expeditious review of the case to ensure no harm occurs to the petitioner in the event of an agency error. The agency must notify the petitioner of the Fact Finding review within 3 work days of the date the request for review is received by the agency. The notice must include information regarding the time, place and date of the scheduled Fact Finding review. The Fact Finding review must be offered within 5 workdays of the date that the notification of the Fact Finding was mailed.

19.2.5 Attendance

The petitioner may have a representative to assist in contesting the agency's decision. The petitioner and/or representative must attend the Fact Finding review. If the petitioner fails to attend the Fact Finding without good cause, the request for review is considered abandoned. The W-2 worker (the FEP or other W-2 employee) who made the decision or a representative should attend the review to present the facts regarding the basis for the agency's decision. The fact finder must allow for both sides to be heard. However, the process must provide for flexibility. If all parties are not available, teleconferencing should be offered. If a participant refuses to sign the W-2 Agency Fact Finding Review form, the fact finder will request the petitioner to write a separate statement regarding the information that is not in agreement. The fact finder may hold the record open if the petitioner requests to submit additional evidence.

19.2.6 Fact Finder File

The fact finder must compile a Fact Finding file. The file must be a complete and thorough written record of the review. A tape recording of the Fact Finding review is recommended. All participants must be informed of the taping. The W-2 agency representative must present all facts and documents to support the agency's

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decision or action. The record must contain all facts and documents presented by the petitioner.

The Fact Finding file must include the following details:

- Who was present,
- The agency action which was contested,
- Information and evidence presented by the petitioner,
- Information and evidence presented by the W-2 agency, and
- The Fact Finding decision.

19.2.7 Fact Gathering

The FEP or W-2 worker must be prepared to introduce at the hearing any testimony, exhibits and material from the case record and other sources pertinent to an equitable decision. The FEP or W-2 worker must be able to:

- Define the issues.
- Review the facts at issue and be familiar with the case as a whole. If more than one program is involved, the FEP or W-2 worker must be familiar with the policies and procedures of the programs that relate to them.
- Ensure that the case record is complete and all necessary documents are present, appropriate, complete and in chronological order.
- Thoroughly document events pertaining to the issue with the date, place and identity of any person involved. Dates of phone calls, names of the person taking the phone call, dates of letters, etc. should be recorded. Prior assignment notification, signed W-2 Participation Agreements, Employability Plans, any correspondence (verbal or written) to support the actions of the W-2 worker may be presented.
- Read pertinent handbook, manual and training instructions. Check to ensure the instructions were up-to-date at the time of the action.

19.2.8 Testimony & Evidence

Once the FEP or W-2 worker has presented documentation to support the action, the petitioner must be provided the opportunity to rebut the information. If credibility is an issue, the fact finder must determine which party was most credible based on testimony or evidence presented during the hearing. Factors used to weigh the evidence include:

- Was testimony or evidence in conflict with other testimony or evidence in the record?
- Does the individual have first hand knowledge?
- Does the individual appear to be telling the truth?
- Will s/he benefit from hiding the truth?
- Has evidence been presented that the petitioner been unreliable or inconsistent in the past?

The fact finder must weigh all factors when making the final decision.

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19.2.9 Fact Finding Decision

The W-2 agency shall issue its decision no later than 5 work days after the review date. This date may be extended as appropriate by the fact finder if the petitioner's requests to submit additional evidence has been granted. It may be possible that some disputes are resolved during the Fact Finding meeting and the decision can be issued at that time.

The W-2 agency shall deny a petition for W-2 review or refuse to grant relief if the petitioner does any of the following:

1. Withdraws the petition in writing.
2. Abandons the petition. Abandonment occurs if the petitioner or the representative fail to appear in person or by a representative at the scheduled review without good cause. Good cause include the following reasons:
 - A required court appearance,
 - Child care was necessary for the individual and child care was unavailable and the W-2 agency was unable to provide or refer for alternate child care arrangements,
 - Other circumstances beyond the control of the individual, as determined by the fact finder.

If during the course of the W-2 Fact Finding review, issues regarding Medicaid and food stamp benefits are resolved, the fact finder may assist the individual in filing a withdrawal for the Fair Hearing request with the Division of Hearings and Appeals. (Refer to Income Maintenance Manual, Chapter II, Part G, Fair Hearings.)

On the day the fact finder reaches a final decision, a certified or true written copy of the decision must be mailed the same day by 1st class mail to the last known address of the petitioner. The fact finder must ensure that the date of the final decision is the same as the mail date, taking into consideration postal holidays. The notice must include the final decision, citing the source of the decision, and provide information regarding the client's right to appeal to the Department for a second level review of the W-2 agency's decision.

19.2.10 Fact Finding Remedies

W-2 agencies are bound by the Fact Finding decision for a particular case. W-2 agencies must comply with the Fact Finding decision within ten days of the decision date.

NOTE: Forms have been developed to request a Fact Finding review, schedule a Fact Finding review and a record to gather information provided during the Fact Finding, and issue the agency decision. (See Appendix 3 for all Fact Finding Forms.)

W-2 Employment Positions

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If the Fact Finding decision overturns the agency's denial of W-2 payments, the W-2 agency shall place the individual in the first available employment position that is appropriate for the individual. An individual is eligible for a payment for the employment position beginning on the date the individual begins participation. No retroactive cash payment for the period prior to participation shall be issued. If the Fact Finding decision indicates a payment was calculated, reduced or terminated improperly, the W-2 agency shall restore the W-2 payment to the appropriate level retroactive to the date on which the payment was improperly calculated, reduced or terminated. However, the payment must be based on completed participation.

Child Care Applicant/Participant Disputes

If the Fact Finding decision overturns the agency's denial or improper calculation of child care due to an error in financial or nonfinancial eligibility determination, child care has been incurred as the result of the allowable activity, and the child care provider is eligible to receive a child care subsidy, the agency shall issue the child care subsidy and/or copayment to the appropriate level retroactive to the date on which the payment was improperly calculated, reduced, or terminated.

Note: Child care providers who believe that the agency made an incorrect decision regarding child care certification or authorization may request an agency review within 45 days. After investigating and reviewing the case circumstances, the agency is required to issue a written decision within 5 days. Individuals who are still not satisfied with the decision may request a review by the DWD/DES Regional office. The DWD Secretary or her designee has final authority on this issue.

Job Access Loan

If the Fact Finding decision overturns the agency's denial of a Job Access Loan (JAL) due to an error in financial or nonfinancial eligibility determination, the agency may reexamine the JAL eligibility based on the new information.

Emergency Assistance

If the Fact Finding decision overturns the agency's denial or improper calculation of Emergency Assistance due to an error in financial or nonfinancial eligibility determination, the agency shall issue the Emergency Assistance payment based on the new information.

19.3.0

DEPARTMENTAL REVIEW (Second Level Review)

The second level review will be completed by the Department of Administration, Division of Hearings and Appeals (DHA). This review is a limited review of the record and the decision of the fact finder. A Departmental Review shall be completed if the applicant or participant petitions the DHA for a review of the W-2 Fact Finding decision. The petition for a Departmental Review must be received by the DHA within 21 days after the date on which the certified copy of the W-2 Fact Finding decision is mailed (the same date as the Fact Finding decision).

The W-2 agency may also request DHA to review a Fact Finding decision at any time.

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DHA shall date stamp requests for a Departmental Review. DHA will fully review the W-2 agency's Fact Finding decision by completing a desk review. DHA will promptly notify the W-2 agency of receipt of a request for a Departmental Review. The W-2 agency must submit the Fact Finding file to DHA within 5 days of receipt of the request.

If after reviewing the Fact Finding file, DHA determines that the file is inadequate, DHA may do any of the following:

1. Remand the file to the W-2 agency to provide additional information;
2. Hold a teleconference interview with the petitioner and W-2 agency representative; or
3. Request written supplementation from the petitioner or W-2 representative.

DHA may grant a postponement of a telephone conference if the petitioner is not available due to a good cause reason. If DHA deems warranted, an extension of the decision may be granted.

The Department shall deny a petition or shall refuse to grant relief if the applicant or participant withdraws the petition for a Fact Finding review in writing.

DHA must complete its review within 10 days of the receipt of the Fact Finding file, unless DHA determines the file is inadequate and there is a delay under 1, 2, or 3, as noted above. A certified or true copy of the written decision of the Departmental Review must be issued to the applicant or participant and the W-2 agency.

19.3.1 Proposed Departmental Review Decisions

DHA may issue a Proposed Departmental Review decision. Under the proposed decision process, DHA reviews hearing decisions to determine if the action conforms with established DWD/DES policy. When DHA prepares a proposed decision, it solicits comments from all parties. The parties must respond within 15 days. Proposed decisions are clearly identified as such. All parties should take care to recognize a proposed decision is not a final decision. Once a proposed decision becomes a final decision, all further petitions on this subject are issued as final decisions. (See IMM, Chapter II, Part G, 15.0.0 Fair Hearings for more information on Proposed Decision Process.)

19.3.2 Departmental Review Final Decision

The Departmental Review final decision is based upon the review of the Fact Finding file, information obtained during a telephone conference, or written supplementation. The Departmental Review final decision contains the following information:

- The facts presented from the Fact Finding file;

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- Any additional statements (oral or written);
- The conclusions applicable from pertinent law; and
- The Departmental Review order.

19.3.3 Departmental Review Remedies

W-2 agencies are bound by the Department Review final decision for a particular case. W-2 agencies must comply with the Departmental Review decision within 10 days. DES may find that final decision's principles and policies require a change in program operations. If so, DES will make a statewide directive. Until such a declaration, the W-2 agency must continue to follow existing written policies and procedures as in all other cases.

W-2 Employment Positions

If following the Departmental Review, it is determined the W-2 agency incorrectly denied an application for a W-2 employment position or the employment position placement was inappropriate, DHA may direct the W-2 agency to place the individual in the first available employment position appropriate for the individual as determined by the W-2 agency or the Department. An individual is eligible for a W-2 payment for the employment position beginning on the date the individual begins participation. No retroactive cash payment for the period prior to participation shall be issued. If the Department determines a W-2 payment was calculated, reduced or terminated improperly, the W-2 agency shall restore the W-2 payment to the appropriate level retroactive to the date on which the payment was improperly calculated, reduced or terminated. However, the payment must be based on completed participation.

Child Care

If the Departmental Review decision overturns the agency's denial or improper calculation of child care due to an error in financial or nonfinancial eligibility determination, child care has been incurred as the result of the allowable activity, and the child care provider is eligible to receive a child care subsidy, the agency shall issue the child care subsidy and/or copayment to the appropriate level retroactive to the date on which the payment was improperly calculated, reduced, or terminated.

Job Access Loan

If the Departmental Review decision overturns the agency's denial of a Job Access Loan (JAL) due to an error in financial or nonfinancial eligibility determination, the agency may reexamine the JAL eligibility based on the new information.

Emergency Assistance

If the Departmental Review decision overturns the agency's denial or improper calculation Emergency Assistance due to an error in financial or nonfinancial eligibility determination, the agency shall issue the Emergency Assistance payment based on the new information.